

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

-VS-

PETER ROGAN, et al.,

Defendants.

Case No. 02 C 3310

Chicago, Illinois

March 24, 2009

9:00 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JOHN W. DARRAH

APPEARANCES:

For the Plaintiff:

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1 THE CLERK: 02 C 3310, United States versus Rogan.

2 MR. SHORT: Good morning, your Honor. David Short
3 on behalf of 410 Montgomery LLC.

4 THE COURT: Good morning, Mr. Short.

5 MR. STEWART: Good morning, your Honor. Joseph
6 Stewart on behalf of the United States.

7 THE COURT: Good morning, Mr. Stewart.

8 MS. LAVINE: Good morning, your Honor. Lindsay
9 LaVine on behalf of claimant Jerry Whitlow.

10 THE COURT: Good morning, Ms. LaVine.

11 MR. SHORT: Your Honor, Erin Krejci is also here
12 from our office, your Honor.

13 THE COURT: Good morning, Ms. Krejci.

14 MS. KREJCI: Good morning.

15 MR. STEWART: Your Honor, if you recall, the
16 Court's ruling was to dismiss the summary judgment motion and
17 ask the government to provide notice to all the potentially
18 interested parties --

19 THE COURT: Pursuant to statute.

20 MR. STEWART: And we've done that. We filed our
21 proof of service today by electronic filing.

22 The sending out of that notice to about two-dozen
23 parties or so prompted claims by about six parties, including
24 Mr. Whitlow, who is a garnishee as well and has been aware of
25 these proceedings for over two years.

1 It's our intention now to move to strike the claims
2 that have been filed and to renew our motion for summary
3 judgment.

4 THE COURT: Has enough time passed, Mr. Stewart,
5 that all interested parties would have had an opportunity not
6 only to receive notice, but to come in here and appear, or --

7 MR. STEWART: Well, the first group, I want to just
8 make clear that we take the position that they have already
9 received notice.

10 But that being said, in response to the additional
11 notice that we've sent out, we believe that -- because
12 everybody was served --

13 THE COURT: That's what I'm talking about, the
14 statutory required notice that I ordered --

15 MR. STEWART: We believe the safest position would
16 be like the 1st or 2nd of April.

17 THE COURT: I'm sorry?

18 MR. STEWART: They were all served by the 12th of
19 March, so we would add 20 days on to that, so it would be
20 about the 1st or 2nd of April, we believe.

21 THE COURT: All right. Why don't we take a status
22 date then early the second week of April. That way everyone
23 will have been served and had the statutory required time to
24 appear.

25 MR. STEWART: Okay.

1 MR. SHORT: Your Honor, if I may?

2 THE COURT: Sure.

3 MR. SHORT: Just to bring a couple procedural
4 matters.

5 The government had filed that motion for summary
6 judgment. We had started this process -- when I say we, 410
7 Montgomery -- by filing a petition or a motion for release of
8 those escrow funds. That's sort of what started it. Joe's
9 response was the summary judgment motion.

10 Our position was, essentially, that our motion on
11 that was our pleading on it and -- I guess the competing
12 pleading with Joe's. That was filed probably a year ago.
13 I'm just -- I don't need to refile that.

14 THE COURT: I would --

15 MR. SHORT: Okay. I just wanted to --

16 THE COURT: I don't want to tell you how to
17 represent your client or what you should or should not do,
18 but particularly in light of my ruling and my requirement
19 that we comply with that statute, I think you might want to
20 rethink exactly what you want to get on file to protect your
21 client's interest under the statute that I found was
22 controlling.

23 MR. SHORT: All right.

24 THE COURT: Why don't we show the previous petition
25 is vacated without prejudice to refile. And you might want

1 to rethink exactly what it is you want to refile and how, and
2 we can address that at the status date.

3 MR. SHORT: Okay.

4 THE COURT: So it will be continued to that date
5 for status and for setting for the time to file pleadings.
6 So no one will be prejudiced by not having something on file
7 by that date.

8 MR. SHORT: Okay. Then I just raised, for the
9 Court's attention -- I had mentioned this to Joe -- as I
10 said, we've represented 410. The \$4 million or so was placed
11 in escrow about two years ago. They retained our firm to
12 follow through this process, and the money by which 410 would
13 pay the firm has been held in escrow for two years. So I
14 indicated to Joe that we would be filing a petition for
15 release of some of those funds for payment of legal fees as
16 normal business expenses.

17 Is there a date by which the Court would want me to
18 file such a petition?

19 THE COURT: What's that date in April, Mel?

20 THE CLERK: April 8th.

21 THE COURT: The matter is continued to April 8th
22 for status and for the setting for time for all parties to
23 file pleadings.

24 MR. SHORT: I'm going to be out of town that day;
25 I've got a trial in Alabama, your Honor. But I can -- I

1 don't know if I need to appear if I have our stuff, unless
2 we're going to set something -- I don't have any new
3 claimants --

4 THE COURT: Do you want us to set it for another
5 date, Counsel, or what are you asking --

6 MR. SHORT: I'm not trying to be difficult, your
7 Honor.

8 THE COURT: I'm just trying to figure out what you
9 want. What do you want me to do, set it over to the
10 following week?

11 MR. SHORT: That would be fine, your Honor.

12 THE CLERK: April 15th at 9:00 a.m.

13 THE COURT: Okay. So it will be set to April 15th
14 at 9:00 a.m. for status and scheduling for the time for all
15 parties to file pleadings.

16 MR. STEWART: Very good, your Honor.

17 MR. SHORT: Thank you, your Honor.

18 MS. LAVINE: Thank you.

19 THE COURT: You're welcome.

20 (Which were all the proceedings heard.)
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CERTIFICATE

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

/s/ Mary M. Hacker

April 15, 2009

Mary M. Hacker
Official Court Reporter

Date